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**REDACTED - FOR PUBLIC INSPECTION**

August 23, 2005

RECEIVED

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room 8B201  
Washington, DC 20554

AUG 23 2005

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Federal Communications Commission  
Office of Secretary

Re: Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in  
the Omaha Metropolitan Statistical Area  
WC Docket No. 04-223  
Notice of Oral Ex Parte Communication

Dear Ms. Dortch:

I am writing this letter to report that on August 22, 2005, Alexandra Wilson, Vice President, Public Policy, of Cox Enterprises, Inc., acting on behalf of Cox Communications Inc. ("Cox"), and I met with Jessica Rosenworcel, legal advisor to Commissioner Copps, regarding issues raised in the above-captioned proceeding. We discussed Cox's continuing opposition to Qwest's Petition in the above-captioned proceeding. In particular, Cox pointed out Qwest's failure to demonstrate that it had met the standards for demonstrating that it is entitled to forbearance from the current incumbent LEC regulations that apply to it in the Omaha Metropolitan Statistical Area. Cox also highlighted the ongoing need for nondiscriminatory interconnection with Qwest and explained why continued enforcement of the Commission's interconnection rules is necessary to the continued success of facilities-based competitors like Cox.

In the course of the meetings, Cox distributed a handout to Ms. Rosenworcel. This handout contained information for which Cox seeks confidential treatment pursuant to the *Protective Order* issued in this proceeding. The confidential information is contained on both pages of the attached handout and is marked "REDACTED." The confidential portions of Cox's written presentation are being filed today with the Secretary's Office under a separate cover.

In accordance with Section 1.1206 of the Commission's rules, an original and one copy of this letter are being filed with the Secretary's Office on this date and a copy of this letter is being provided to Ms. Rosenworcel.

No. of Copies rec'd 042  
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Marlene H. Dortch, Esq.

August 23, 2005

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Please inform me if any questions should arise in connection with this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J.G. Harrington", with a stylized flourish at the end.

J.G. Harrington

Counsel to Cox Communications, Inc.

Attachment

cc (w/attachment): Jessica Rosenworcel

**KEY CONSIDERATIONS IN QWEST OMAHA FORBEARANCE PROCEEDING**  
WC DOCKET NO. 04-223

- **A fully facilities-based competitor, Cox provides local circuit-switched telephone services to residential and business subscribers in Omaha.** Cox offers a well-priced, highly reliable lifeline alternative to the phone services provided by Qwest, the incumbent provider. The value that customers place on Cox's phone service is reflected in the fact that Cox has won the J.D. Power award for Local Residential Telephone Customer Satisfaction in the Western region – which includes Nebraska and Iowa – for the last three years in a row.
- **Cox's success in Omaha continues to depend on its ability to secure interconnection with Qwest under Section 251(c) of the 1996 Act.** Although Cox is a facilities-based competitor that uses its own network to provide competitive phone services to Omaha consumers, Cox still must rely on certain interconnection provisions of Section 251(c) in order to provide a viable competitive alternative. In particular, Cox needs:
  - *Interconnection, including transiting*
  - *Collocation*
  - *Unbundled mass market loops*
  - *Negotiation in good faith*
  - *Network change notification*
- **Qwest's loss of retail market share to Cox and other carriers is not the controlling consideration when determining whether Qwest should no longer be subject to Section 251(c) of the Act.** Forbearance from Section 251(c) is warranted only when the incumbent can show that there are meaningful alternatives to the interconnection elements needed by facilities-based competitive LECs to offer competitive phone services. This is consistent with the approach the Commission has taken in evaluating whether unbundled elements should continue to be made available, and recognizes that the standards for elimination of Section 251(c) obligations should relate to the nature of those obligations.
- **The record demonstrates that facilities-based competitive LECs do not have interconnection alternatives in Omaha:**
  - *Qwest has the only ubiquitous network in the Omaha MSA.* Even Cox, which is the most successful competitor in the area, provides service in only 18 of the 24 wire centers identified by Qwest. Cox has full coverage in only [REDACTED] of those wire centers, and it covers less than 30 percent of [REDACTED] additional wire centers. Moreover, even in the areas it covers, Cox does not have access to more than 8,000 MTEs. The ubiquity and much broader reach of Qwest's network give it significant bargaining advantages in interconnection negotiations with competitive LECs, the same advantages that were recognized in the Commission's initial *Local Competition Order*.
  - *All competitive LECs and wireless providers depend on Qwest for interconnection.* Because Qwest has the only ubiquitous network in Omaha, all other carriers depend on Qwest for interconnection. Over [REDACTED] percent of all of Cox's traffic to

other carriers goes through its collocation facilities with Qwest, and the other carriers in Omaha likely send at least as much of their traffic through Qwest. Despite Cox's efforts, it still relies on Qwest for interconnection with about half of the other carriers in the Omaha market.

- *Qwest retains the incentive and ability to discriminate.* As the only ubiquitous provider of interconnection, Qwest retains power over other carriers in the MSA. Qwest also is by far the dominant carrier in the remainder of Nebraska and Iowa, with little or no competition in areas outside of Omaha. These factors give Qwest the ability to discriminate by imposing unreasonable terms for interconnection, and it has the incentive to do so because making it more expensive or otherwise difficult for competitors to operate will increase Qwest's market share.
- **In this case, Qwest has not even addressed these issues and thus has not met its statutory burden.** The Commission can grant forbearance only if the petitioner can show that the forbore regulation "is not necessary." Here, Qwest is seeking forbearance from requirements that govern relationships between carriers, yet it has made no showing at all that competitive LECs have alternatives to Qwest for Section 251(c) interconnection or that such interconnection with Qwest no longer is necessary for a competitor to be successful. Qwest's showings in this proceeding relate only to retail market share.
- **Qwest mischaracterizes Cox's market share.** Even if retail market share were a key element in the Commission's analysis, Qwest has not accurately stated what portion of the Omaha market Cox actually serves. Even within the areas of Omaha that Cox can serve, it provides service to less than [REDACTED] percent of the customer locations. When the large areas served by Qwest and not served by Cox are considered, Cox's market share in the Omaha MSA as a whole is considerably lower.
- **There are significant practical difficulties with the relief Qwest has requested.** Among other things, interconnection agreements are intended to operate on a state-wide basis and Qwest has not explained how it would treat a competitive LEC that provided service both within and outside the Omaha MSA. In addition, Qwest has not consistently explained the geographic scope of the relief it seeks.
- **Cox does not oppose nondominant treatment for Qwest.** Granting nondominant status would be consistent with the Commission's actions in proceedings involving other carriers and consistent with Qwest's evidence concerning retail market share. Nondominant status would reflect Qwest's place in the retail marketplace.